

East Longmeadow Planning Board

60 Center Square

East Longmeadow, Massachusetts 01028

since 1894

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Alessandro Meccia, chair

Ralph Page, vice-chair

Tyde Richards, clerk

George Kingston

Michael Carabetta

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Minutes of April 21, 2015

Present were: Chair, Alessandro Meccia; Vice Chair Ralph Page; Clerk, Tyde Richards, George Kingston and Michael Carabetta.

Chair, Michael Carabetta opened the meeting and said that it was being taped by ELCAT as well as the Board. He asked if anyone else was taping it, Chris Goudreau from the Reminder was also taping it.

Public Hearing Special Permit – Nu-Way Homes, 28 Edmund Street

Ralph Page recused himself because of possible conflict.

Chair, Michael Carabetta opened the public hearing for Nu-Way Homes, Inc. Clerk, Tyde Richards read the legal notice and correspondence into the record.

Representative Attorney Larry Levine for Nu-Ways, Inc., said that the petitioner submitted a permit application for a house located at 28 Edmund Street. He said that the house has been there approximately since 1880. Attorney Levine said that the petitioner John Handzel owner of Nu-Way Home, LLC. is asking that the Board grant a Special Permit, Section 6 because the structure is pre-existing, non-conforming and he intends to change the footprint. He said that the approval will not be a detriment to the neighborhood and the plan submitted shows the raising of the existing structure and the placement of the new structure. Attorney Levine said that the new structure will not have the frontage or the square footage and the setback will be further from street and will conform to the side yard & rear setback zoning requirements.

Mr. Carabetta said that it will meet the set back for that zone, correct. Attorney Levine said that is correct.

Attorney Levine said in the past couple of weeks they have heard rumors of what the potential use of the new house will be. He said that Mr. Handzel is undecided if he will personally live in the house or sell it as a single family home. Attorney Levine said that there is absolutely no intent to have a halfway house the only intent is for a single family home to be built.

Mr. Carabetta asked why they feel it needs a Section 6, because in looking under 3.4 and 3.56 it meets the criteria. He said that it meets the criteria for a pre-existing, non-conforming lot and under 3.4 it also meets the criteria for pre-existing, non-conforming structure & setbacks but all of that is going away.

Attorney Levine said correct 3.4 and Section 6 of 40A have almost identical language and when you have the reconstruction of any pre-existing, non-conforming structure either the permit granting authority, which in this case would be the Building Inspector or the Special Permit granting authority which is the Planning Board has to make a finding. He said that is what it says in the statute that the change of existing or to the existing structure whether it be alternation, reconstruction, extension or structural change shall not be substantially more detrimental to the neighborhood than the existing non-conforming use. Attorney Levine said in the town's by-law the wording is slightly different it says that it does not increase the non-conforming nature of said structure.

Mr. Carabetta read the definition of 3.4 and said that the by-law was adopted in 1962 and that the structure was built in 1880 and he is assuming that it pre-dates the by-laws that comply to a pre-existing, non-conforming. He said that he is still not sure why they need a Section 6 finding.

Attorney Levine said if they used the exact same footprint and not vary it at all he doesn't know if a Section 6 finding would apply. He said that the state law goes a little bit further and says the special permit granting authority has to make a determination if someone is reconstructing or altering such a structure. He believes a Section 6 finding would be needed. Attorney Levine said that he doesn't think it can be done on it's own unless the footprint was identical.

Mr. Carabetta said that he knows in the past it has been done and to the best of his knowledge 28 Edmund Street is the first Section 6 finding that he knows of to take a house down on a pre-existing, non-conforming lot.

Attorney Levine said that he doesn't agree with that interpretation and another practical reason is if the statute was required and the Planning Board approves it an appeal would only be allowed within 20 days. He said if a building permit was issued and issued improperly it's his understanding that there is a 6 year statute of limitations.

Mr. Carabetta asked Attorney Levine if the building meets all of the setbacks and all the side yard requirements how could it be non-conforming. Attorney Levine said that it doesn't meet the front setback. Mr. Carabetta said that the lot doesn't but there are provisions for pre-existing, non-conforming lots in the town's by-law. Attorney Levine said that he has seen it and agrees with it with the extent that a pre-existing structure does not need a variance to do what they are suggesting and said that many others have done it. He said the by-law says it does not increase the non conforming nature of said structure and asked who makes that determination?

Mr. Carabetta said for argument sake it is a single family residence. Attorney Levine said that it has already been asked and the permit is not going to be issued per the Building Inspector. Mr. Carabetta said that he doesn't understand why he won't make

the decision. Attorney Levine said because most Building Inspector's do not want to take that burden for that decision based on the statute. Ms. Macdonald said that the Building Inspector has specifically said that it needs a Special Permit Section 6 finding.

Mr. Kingston said if the developer wants the finding the Planning Board is the Board that makes that finding. He said if they have chosen to file for a Special Permit the Board should respect that and act on their request.

Mr. Carabetta said that he would agree with that but his only concern is what has been done in the past and now they are setting a new standard. Attorney Levine said that he has been before the Planning Board on at least two or three applications almost identical. Mr. Carabetta said that he has been before the Board for similar things also and has not had to get a Section 6. Attorney Levine asked if the Building Inspector issued the permit on his own. Mr. Carabetta said correct that the current Building Inspector has done it, the previous Building Inspector has done it and an interim Inspector has done it. Attorney Levine said in the cases he has dealt with that has not been the case and said the way he reads the statute for protection of the applicant whether it be a homeowner or a builder he would feel more secure having a finding using those words. Ms. Macdonald said 20 days compared to 6 years. Attorney Levine said exactly.

Mr. Carabetta addressed the Board for any questions.

Mr. Kingston said in looking at the plan the only thing missing is the frontage and the lot size and it looks like it is less non-conforming, it will not be detrimental to the neighborhood and will be a new house 2 feet further back from the street.

Mr. Meccia said that he agrees with Mr. Kingston, it looks good and it is setback further from the street.

Mr. Richards said that he would rather see a new house on a non-conforming lot with hardly no changes whatsoever as opposed to something that is going to be there forever that slowly will deteriorate.

Mr. Carabetta said that he wants to get the language right according to what they think it is and what town counsel thinks it is. He said the law of average is that there is a front setback and he isn't sure they took that into play. Attorney Levine said that it still meets the current requirements Mr. Carabetta said that he realizes that but if there is a house closer to the road they can in fact if they wanted to and his question would be if they think that would require a Section 6. Attorney Levine said regardless if it varies at all from the existing footprint it needs a Section 6 finding.

Mr. Carabetta addressed the audience for any questions.

Mark Fitzpatrick, 99 Maple Street said that it is his understanding that there are going to be two homes, one on the adjacent lot and the one they are going to tear down and rebuild, correct.

Attorney Levine said that there has been no actual decision what they are doing with the other lot there maybe a marketing decision not to build there.

Mr. Fitzpatrick said when he spoke with Mr. Handzel he said he was thinking of putting two homes up and he doesn't have a problem with him doing that but he didn't hear any of that being discussed that evening.

Mr. Carabetta said that it is not really relevant because all they are talking about is the one lot that evening.

Judith Severin, 44 Edmund Street asked if there was a halfway house going in there and would they have to have some kind of permit.

Mr. Carabetta said not from the Planning Board and that they are there only for the issue brought forward to them that evening.

John Handzel, Applicant reiterated that there are no plans for a halfway house - his plans are for a single family home.

Melanie Mercier, 50 Mill Road asked if someone wanted to have a home for disabled people do they need a Special Permit.

Mr. Carabetta said no to the best of his knowledge because it is an allowed use set by the state.

Mr. Kingston added that Section 3 of Chapter 40A of the Zoning Act specifically prohibits housing discriminations against disabled persons.

Phil Burns, 8 Edmund Street said that it's his understanding that there are two lots and the issue brought to the Board is to build a single family home on one of those lots.

Mr. Carabetta said that is correct and that one of the parcels has a house on it currently and Mr. Handzel would like to take that down and put a new house in its place. He said that is all that has been brought before the Board. Mr. Burns said hypothetically someone could build another house on that lot and as abutters they would not have the ability to appeal that. Mr. Carabetta said that is correct because both lots are zoned for residential use and both lots are building lots.

Tim Murphy, 25 Edmund Street asked what the plans are for the vacant lot.

Mr. Carabetta said that it is not relevant to the request. He said that they are only talking about the one lot that has a house on it and they want to take it down and build another one on the pre-existing non-conforming lot.

Mr. Murphy said that they really don't have a say in it.

Mr. Carabetta said neither does the Board and a Section 6 finding gets to take in the public's opinion. He said for instance if there was an issue with the topography and it

was going to directly affect one of the neighbors then that neighbor would have a chance to speak.

Attorney Levine said in response to that Mr. Handzel could take the existing house down today and offer the lot for sale to some sort of exempt organization and they could move in tomorrow.

Mr. Carabetta addressed the Board for any further questions. There being none and upon motion duly made by George Kingston and seconded by Alessandro Meccia, the Board voted unanimously (4-0) to close the public hearing. Upon motion duly made by George Kingston and seconded by Alessandro Meccia the Board voted unanimously (4-0) to issue a Special Permit, Section 6 to Nu-Way Homes, LLC for a single family home at 28 Edmund Street.

Informal discussion - Michael Crowley regarding potential upscale apartment complex

Mr. Crowley said in talking with Ms. Macdonald on another matter he mentioned to her that he & his wife have been looking for apartments. He said that he has looked up & down the valley and the only place he could find one was in Amherst. Mr. Crowley said over the past couple of years he has spent a lot of time in East Longmeadow and has gotten to know the community. He said that he realized it has everything an empty nester would want such as the bike trail, ball fields, a health club right in the center, retail, and restaurants. Mr. Crowley said but there is no place for young active adults to live and he knows of some gentlemen in Amherst who have built some really nice apartment units there. He said that he thinks some of the communities in Hampden County are very challenged to be able to accommodate that type of development that he is considering. Mr. Crowley said that East Longmeadow is the type of community that is needed to support the type of development. He is proposing for market rate housing, high end living around \$2,000 to \$2,500 per month for maybe somewhere between 25 to 50 units. He thinks it will be a challenge to find a piece of land and in looking around the community there are some pretty obsolete lower value industrial properties in the immediate area that he thinks over time could be good candidates to transition something that he actually thinks the community needs to keep people aging in place. Mr. Crowley said in talking with Ms. Macdonald she told him that there is no provision in the by-law that allows for that and that apartments cannot be done in East Longmeadow unless they are senior housing. He said that he told Ms. Macdonald that he would continue his search in Hampden County but he thinks East Longmeadow has all of the qualities necessary to make it a perfect opportunity because it is close to Springfield and Hartford and there are a lot of young professionals rotating in & out of those communities. Mr. Crowley said frankly there is not an abundance of really good quality housing for those individuals and because of the East Longmeadow community and how it's blossomed and what the Boards have done over the years to keep East Longmeadow growing and prospering and keep it safe and vibrant community. He said that he thinks East Longmeadow is a perfect candidate to contemplate something like that and was wondering if there is an appetite at the Board level to think about entertaining such a concept. If there is he would probably take it to the next step.

Mr. Carabetta said that he thinks the concept is great and said that Jay LeFebvre was talking about something similar to that on his property on Maple Street but thinks he was talking about mixed use and it didn't quite fit the lot.

Mr. Crowley said that he thinks density is important and envisions underground parking with two or three floors of housing above that. He said he is not sure if it is a crazy idea and if it's not the Boards vision or the town's vision then he is not going anywhere with it.

Mr. Carabetta said that he doesn't think it's a crazy idea but the first thing that would have to be done is to create a zone for it or add it to another zone which could get complicated. He said that is where he would struggle with it because if they say they would allow it in one place then someone else may ask then why can't they do it. Mr. Crowley said that he thought if there was an appetite for it they could piggy back it off the Village Center district.

Mr. Kingston said that there isn't a Village Center district it is Planned Business district. He said that the Village Center one did not pass. Ms. Macdonald added that it is not a district it is a use. Mr. Kingston said that there are the Elms Condos that are mostly owner occupied but not all of them and they can be rented out. Ms. Macdonald said that is not limited to age either. Mr. Kingston said that the concept of multiple family housing has gone through town meeting. Ms. Macdonald said that it is planned residential district. Mr. Kingston said one thing that needs to be remembered is that any zone change or overlay and anything they add to the zoning by-law applies to everybody not just him. He said that anybody else could come in and as long as they met the by-law they could build what they want to build. Ms. Macdonald said that a zone change needs to show a community benefit. Mr. Kingston said that he thinks the Casino issue will be brought up in that its going to attract workers at the Casino. Mr. Crowley said that he could envision some MGM Executives living there for a couple of years. Mr. Kingston said but what people are concerned about is a change of population where the Casino rents an apartment and has people in and out of there every 3 months. Mr. Crowley said from an economic basis he doesn't think they would be able to afford the type of rents he would need to justify to build the complex. Mr. Kingston said that he likes the idea and thinks it is doable but he thinks there is a lot of education involved as well as choosing the right site. He said that he doesn't think it is going to happen very rapidly but he thinks it could happen.

Mr. Richards said that he likes the idea and has for years. He said from time to time he would contact Ms. Macdonald and ask her about a site and if it could happen. Mr. Richards said if someone wants to shepherd that through and it is done properly he would certainly be interested in knowing more about it.

Mr. Page said that he thinks one of things is density, how many apartments he is talking about, how much additional traffic there is going to be. He said if he is talking somewhere close to the center that will add to the traffic.

Mr. Kingston said that traffic is an issue and the other issue that came up on a previous proposal was lot coverage and waivers on lot coverage. He said another issue was

conflict with existing business in that if someone chooses a lot or a parcel that backs up to an existing business that might be somewhat noisy and suddenly there is the issue of people paying two thousand a month and see a business looking out their back window. Mr. Crowley said the wave of the future is much different than that and said it is higher density and bringing people into a closer knit community, keeping green space as much as possible away from that. He said that he wasn't saying if East Longmeadow was ready for that but if they are they would need higher density, elevation, more traffic to the area and if those are things the community doesn't want to live with he understands that. Mr. Meccia and Mr. Page both agreed that is a good thought.

After further discussion the Board agreed that there might be a possibility for Mr. Crowley's idea and told him to give it some more thought and come back to the Board. Mr. Crowley thanked the Board for their time.

Request for Signage – Taylor Rental, 200 Shaker Road

The Board reviewed the proposed signage for Taylor Rental, 200 Shaker Road consisting of one ground sign showing the name of the business and measuring 7' x 2' for a total of 14 square feet to be placed on the existing sign pole as shown on the sign rendering.

Upon motion duly made by George Kingston and seconded by Alessandro Meccia, the Board voted unanimously (5-0) for one ground sign measuring 7' x 2' for a total of 14 square feet to be placed on the existing sign pole, conditioned upon obtaining approval and a permit from the Building Inspector.

Request for Signage – Tranquility Nails and Spa, 628 North Main Street

The Board reviewed the proposed signage for Tranquility Nails and Spa, 628 North Main Street consisting of one building sign measuring 3' x 12' for a total of 36 square feet showing Tranquility Nails & Spa; and one panel sign measuring 13.5" x 68.5" and included in the total square feet of the existing ground sign.

Upon motion duly made by George Kingston and seconded by Ralph Page, the Board voted unanimously (5-0) for one building sign measuring 3' x 12' for a total of 36 square feet showing Tranquility Nails & Spa; and one panel sign measuring 13.5" x 68.5" and included in the total square feet of the existing ground sign, conditioned upon obtaining approval and a permit from the Building Inspector.

Waivers Approved

Kelley L. Norman MA LMHC, LLC, 280 North Main Street - Psychotherapy Services

ANR – St. Paul's Church

Michael Carabetta recused himself because of possible conflict of interest.

Ms. Macdonald said what is happening with the ANR for St. Paul is that the existing property really does not reflect what's there. She said that Mr. Page came into the office that day and they spoke to the architect and he is going to provide the Board with another plan because the Board approved the building in the back so the whole parking area is different. Ms. Macdonald said rather than have it recorded with the registry of deeds as the latest plan they need to deny it for insufficient information.

Upon motion duly made by George Kingston and seconded by Tyde Richards, the Board voted unanimously (4-0) to deny the ANR plan for lack of information.

Reorganization of the Board

The Board members re-organized and upon motion duly made by George Kingston and seconded by Ralph Page, the Board voted unanimously to elect Alessandro Meccia as Chairman for the 2015-2016 year. Upon motion duly made by George Kingston and seconded by Tyde Richards, the Board voted unanimously to elect Ralph Page as Vice Chairman for the 2015-2016 year. Upon motion duly made by Ralph Page and seconded by George Kingston, the Board voted to elect Tyde Richards as Clerk for the 2015-2016 year.

With no further business and upon motion duly made by Alessandro Meccia and seconded by George Kingston, the Board voted 5-0 to adjourn at 7:45 p.m.

For the Board,

Tyde Richards, Clerk